

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Rajesh B. Shah	:	
-vs-	:	
Illinois Bell Telephone Company	:	
	:	03-0494
Complaint as to classification of	:	
residential into business line by	:	
utility company in Chicago, Illinois.	:	

FINAL BRIEF OF RAJESH B. SHAH

Rajesh B. Shah filed a formal complaint against Illinois Bell Telephone Company (“SBC Illinois”) on August 18, 2003, claiming that the company improperly classified him as a business customer. SBC Illinois submits this brief following the evidentiary hearing on Mr. Shah’s Complaint.

ANSWERS TO THE INITIAL BRIEFS SUBMITTED BY DEFENDANT ARE IN RED INK WITH BOLD LETTER.

FACTS

Rajesh B. Shah moved into the premises at 107 West Van Buren Street, No. 215, in Chicago, on August 1, 2000. Tr. 90. The space he is renting consists of one room measuring approximately 150 square feet. Tr. 92. The room does not contain a built-in kitchen or a bathroom, and Mr. Shah sleeps on the floor, rather than in a bed. Tr. 92-93.

The features that the defendant is mentioning also do not constitute the location as business location. However, it can truly represent a unique living style than normal Americans (but still better than homeless Americans). There are many places in City like that which consist of just single room, which are rented not for business purpose. Tenant prefers to sleep on the floor in

no way makes the place a business premises. Many doctors recommend their patients to sleep on floor as part of the treatment. If a person, living in room with no kitchen, should the person, be taxed as business for use of telephone? Can a location do not have features of residence be classified as business location? How the defendant does value their customers when requesting their services per their need? I am referring all this facts for the order I requested to place.

The other tenants in Mr. Shah's building are commercial. There are two bar/restaurants on the street level. Tr. 53; see SBC Ill. Cross Ex. 2. The second floor, where Mr. Shah's room is located, contains a mix of office tenants, including two lawyers, a delivery company, and a stamp company. Tr. 54-56.

I also mentioned several times to the defendant that needs of tenants and needs of property owners has drastically changed within the City region. Many premises are converting from commercial to residential or vice versa or mix of both. Additional part is explained in Exhibit SHAH (which is not open for public). Briefly, most of the services through these two telephone lines were used for domestic and personal use and not commercial purpose. These can be verified by long distance numbers submitted as SBC Cross 3. I attempt to submit additional long distance bills from various other companies at the time when I submitted yellow page listing under Employment, however, the proxy representative denied the request before the Judge and ask me to submit only what was discussed earlier.

Establishment of Service

Mr. Shah established service with SBC Illinois at the 107 West Van Buren address on July 28, 2000. SBC Ill. Ex. 1.0 (Conrow), p. 3; SBC Cross Ex. 3 (Aug. 28, 2000 bill, p.1). SBC Illinois installed two business lines at the premises and put in four two-line jacks. Tr. 101, 191. Because Mr. Shah's order involved business lines, he was entitled to a free Yellow Pages listing. Tr. 106. The order establishing his service shows that Mr. Shah's account was to be listed in the Yellow Pages under the heading "Employment Contractors – Temporary Help." SBC Ill. Direct Ex. 1, p. 1; see also Tr. 45, 105-06; Shah Ex. 1 on Reopening.¹

Once again, the original installation request was not for business lines. Originality of the order was changed at the sole discretion of the defendants several times which was documented on their database. The installation was performed, free one month of features were offer which per them was for business lines and forceful listing of my Name in Yellow Pages was done without justifying needs of my request. Ms. Conrow was wisely stated during her testimony that business can be of one line and can be a global entity, however she fails to tell that residence can have different shapes and places which does not have residence features in no way can be considered as business.

Mr. Shah testified that, when he contacted SBC Illinois to establish residential service, he was "offered one additional line . . . with installation free." Tr. 40; see Complaint ¶ 1. Although SBC Illinois offered a marketing promotion in July 2000 that involved a waiver of non-recurring charges for installation of an additional line, that promotion was available only to business customers. Tr. 192-93; SBC Ill. Ex. 1.0 (Conrow), Schedule 1. This promotion expired July 31, 2000. See SBC Ill. Ex. 1.0 (Conrow), Schedule 1.

¹ The Chicago White Pages also provides Mr. Shah's number and address under the listing "Rajesh B. Shah." SBC Ill. Cross Ex. 1; Tr. 49, 51.

I am having very tough time believing the fact how the telephone lines, which were requested, was twisted to other category. Perhaps this may be management problem of the defendant and from my side under the oath I maintain the truth that the original request was not for business lines. The defendant changed the original order several times; however they failed to produce detailed report of how it ended up into business category. I also requested report based on my social security which shows history of telephone orders I placed in past, but it was denied saying it is not available.

Mr. Shah's two lines were assigned the numbers 312-789-9500 and 312-789-9600. SBC Ill. Cross Ex. 3 (Aug. 28, 2000 bill, p. 1) (identifying telephone numbers). Mr. Shah explained that he spent a lot of time selecting telephone numbers for the two lines because he wanted numbers that would be easy to remember. Tr. 94; Complaint ¶ 1. According to Nancy Doyle, an associate director in the SBC Illinois business sales operations group, the company attempts to reserve "hundred numbers," such as Mr. Shah received, for business customers. Tr. 106-07.

I explained the issue in original initial briefing. Historically, Rajesh B. Shah was listed as residential line and also was successful to easy to remember telephone numbers such as (312) 902-3333 and 312) ***-0011.

Shah-USA

Mr. Shah is the owner of a business known as Shah-USA, which offers business services and product distribution and supply services to customers. Tr. 74-75. The web-site for Shah-USA (found at www.shah-usa.com) describes the business as "a diversified firm based in Chicago." SBC Ill. Cross Ex. 4. The site identifies Shah-USA's office address as 107

W. Van Buren, No. 215, in Chicago; its telephone number as 312-789-9500; and its fax number as 312-789-9600. Id.

The complain is regarding listing services as business instead of residential by defendant from the beginning at the time of establishment and Shah-USA neither exist at that time nor for couple years. Creation of Shah-USA web site was part of training project of HTML. I completely agree that I am 100% owner of the firm Shah-USA and have address and telephone numbers “a diversified firm based in Chicago”; however, I also testified that I do not operate business using the services provided by the defendant in the form of telephone connection. Most of my business is operated via PO Box address, through email, correspondence, and meeting prospects in person in their office. I also testified that for credibility purpose, I cannot operate business without any physical location and must write an address where people can contact me. Additionally, I do not own or rent any other property in whole United States of America. Moreover, business activities are insignificant at this location and there is neither walk in allowed nor a door of the room stays open. The listed telephone numbers are not used for solicitation or telemarketing purpose. Those are provided just incase anyone wants to reach me besides my email, or via mail to my PO Box. After establishment of services, the service bills were never went as high as \$140.00 or even close to that therefore, reassessing situation from defendant does not arise where they decide whether to change it from residential line to business line. Moreover, I do not have any history of owning any business lines under name Rajesh B. Shah. Even today, due to very low activities that Shah-USA have, I can not justify the cost of having telephone lines for the business.

This office address and these telephone numbers for Shah-USA also can be found on other web-sites listing notaries public, tax accountants, or businesses that market services to the

Indian community. See SBC Ill. Cross. Ex. 5-8. The advertisement for Shah-USA on the IndiaBook.com site is dated August 26, 2001. SBC Ill. Cross Ex. 8.

Other listing are

Those listings were part of my HTML and web site development and like to get recognition from community about what I do. These services are performed either at person who either emails me or calls me at their location; and used primarily for incoming calls. Usage of the defendant has provided service is very negligible in terms of business.. The business name is Shah-USA and I am taking care of incoming telephones, as the business cannot afford to have its own line and need for the business telephone line is insignificant. The listing of my personal telephone is for incoming purpose incase prospect prefers to contact me via telephone instead of via email or mail. Very insignificant level of activities are done using the services provided by the defendant.

Charges, Payments and Credits

When Mr. Shah received his first bill in August 2000, he noticed that he was being charged for business lines. Tr. 40-41. On September 7, 2000, he contacted SBC Illinois to question the classification of his service. SBC Ill. Direct Ex. 4; Tr. 178. The records for Mr. Shah's account indicate that, on September 11, the company concluded Mr. Shah was in a commercial location and should have business service. SBC Ill. Direct Ex. 4; Tr. 179-80. Ms. Doyle could not tell from the account records what the company did to investigate the classification of Mr. Shah's service. Tr. 179. She stated that, in general, SBC Illinois could investigate a claim of service misclassification by sending a technician to the premises to determine whether the service was located in a residential or commercial building. Tr. 176.

Once again, the decision is made at their own discretion for how to classify the telephone lines. The room had new lines installation request and there were no history of any business or residential services offered to the room. My voice was not heard and was repeatedly argued for hours in same tune. I spend hours and hours of my time to discuss bill with them every time I receive a new statement. I was billed different amount that I was originally promised charges such as Integretel Inc for \$33.10 was not authorized by me. Ameritech Internet Services was offered at \$24.99 and later they started billing me at \$49.95. Briefly speaking the total invoice amount is exaggerated by 75% plus and it is tedious to figure out exact amount due. Additionally, time and cost involved in figuring it out is more that actual dues therefore it should not be even accounted.

The August 2000 bill for Mr. Shah's account also included a total of \$290.85 in charges (before taxes) relating to the installation of service, including approximately \$200 in installation service call and labor charges. Tr. 123-24; SBC Ill. Cross Ex. 3 (August 28, 2000 bill, p. 1). After Mr. Shah complained that these charges were inconsistent with the offer under which he established service (Tr. 41), SBC Illinois credited the account a total of \$210.62 (including taxes) on his September 2000 bill. Tr. 126-27; SBC Ill. Cross Ex. 3 (Sept. 28, 2000 bill, p. 1). The account records indicate that this credit was provided because of a promotion or previous agreement with the customer. SBC Ill. Direct Ex. 4; Tr. 129-30.

It took my lots of time and lead to repetitive calling them for adjustment of erroneous billing.

SBC Illinois provided a number of other credits to Mr. Shah's account over the next two years. For example, Mr. Shah received a \$337.05 credit in July 2001. SBC Ill. Cross Ex. 3 (July 28, 2001, bill, p. 1). The account records show that this credit was a goodwill

adjustment because of Mr. Shah's dispute over installation charges billed in August 2000. SBC Ill. Direct Ex. 5; Tr. 137-39. He also received \$439.87 credit in January 2002. SBC Ill. Cross Ex. 3 (Jan. 28, 2002 bill, p. 1). This credit also arose from the charges to install his service in July 2000. SBC Ill. Direct Ex. 6; Tr. 141-42. SBC Illinois ultimately provided Mr. Shah with credits multiple times for the August 2000 installation charges. Tr. 172.

It becomes really nightmare and the defendant failed to correct problem even after repetitive calls. This proves that I went through lots of pain every month about erroneous billing issues.

Mr. Shah made only occasional payments on his account from the time he established service. See SBC Ill. Cross Ex. 3; SBC Ill. Direct Ex. 3. He last made a payment in February 2002 (see SBC Ill. Direct Ex. 3) and, as of the September 2003 bill, his account balance was \$2608.30. SBC Ill. Cross Ex. 3 (Sept. 28, 2003 bill, p. 1).

The balance amount do not reflect correct amount. Briefly speaking the total invoice amount is exaggerated by 75% plus and it is tedious to figure out exact amount due. Additionally, time and cost involved in figuring it out is more that actual dues therefore it should not be even accounted.

In addition to charges from SBC Illinois for local service, Mr. Shah's telephone bills over the last several years included charges for other services, including charges from long-distance carriers such as Sprint and HBS. See, e.g., SBC Ill. Cross Ex. 3 (Sept. 28, 2000 bill, p. 3, and Aug. 28, 2001, p. 3). In November 2000, Mr. Shah subscribed to DSL service from Ameritech Internet Services (see SBC Ill. Cross Ex. 3 (Nov. 28, 2000 bill, p.2; Tr. 57),² and he continued to be billed for DSL internet service – on one or both of his lines – through at least

² Ameritech Internet Services is now known as SBC Yahoo! Internet Services.

September 2003. See SBC Ill. Cross Ex. 3; Tr. 57-58.³ In addition, between January 2002 and September 2003, companies such as Integretel, Inc., and Enhanced Services Billing, Inc. (“ESBI”) billed the account for what appear to be internet related charges. See SBC Ill. Cross Ex. 3.⁴

I spend hours and hours of my time to discuss bill with them every time I receive a new statement. I was billed different amount that I was originally promised charges such as Integretel Inc for \$33.10 was not authorized by me. Ameritech Internet Services was offered at \$24.99 and later they started billing me at \$49.95. The order for second DSL line was placed with the objective of moving DSL from 789-9600 to 789-9500 because DSL line do not support having digital fax and creates connection problem. However, I spend two days in figuring out what can I do to correct the connection and was failed to get any help from DSL Company of the defendant. If the second DSL were connected properly, I would have cancelled the first DSL line. Briefly speaking the total invoice amount is exaggerated by 75% plus and it is tedious to figure out exact amount due. Additionally, time and cost involved in figuring it out is more that actual dues therefore it should not be even accounted.

SBC Illinois charges different rates to business and residential customers for local service. In particular, the line rate and usage rates are generally higher for business customers. Tr. 145-46. As a business customer, Mr. Shah was billed a monthly line charge of between \$5.03 and \$5.10 per access line between August 2000 and September 2003. See SBC Ill. Cross Ex. 3; Tr. 150 (line charge was \$5.10 in August 2000). In comparison, the monthly line charge

³ Mr. Shah apparently added DSL internet service to the second line in July 2003. See SBC Ill. Cross Ex. 3 (July 28, 2003 bill, p. 2).

⁴ For example, in March 2002, Integretel billed a total of \$33.10 for something described as “Websource Internet.” SBC Ill. Cross Ex. 3 (Mar. 28, 2002 bill, p. 3). The September 2003 bill includes \$33.10 in charges from ESBI for something described as “Webxites Silver Monthly Fee.” Id. (Sept. 28, 2003 bill, p. 3).

for a residential access line during this period was \$2.55 per line. SBC Ill. Direct Ex. 7; Tr. 147-48.⁵ At the hearing, Mr. Shah agreed that he would have been obligated to pay SBC Illinois' rates for residential local service had his account been classified as a residential account. Tr. 56-57.

I am responsible citizen and aware of the financial obligation. The arbitration is not bought before Commission to dispute the financial obligation. However, the damages in arguments with defendant and not resolving the issue out of court have put tremendous financial pressure on me and you be the judge if there was total negligence in the defendant part. The defendant gone out of their way and spent their resources for such a negligible amount and on top of it not correcting the situation. Sort and sweet, LIABILITY OF THE COMPANY per exhibit 8, 9, 10 do not allow customer to be paid for damages. However, in true sense the liability here is not customer but their employees who were involved in this mess and never took seriously to correct the situation. The defendant should encourage the liability to be paid to me for bringing such a poor performance of their employee so that they can correct the situation and improve the quality of services. Paying me is not liability at all, it is cost savings to the defended because they will have an opportunity to remove those rotten eggs from their entity.

SBC Service Classification Decisions

Ms. Doyle described the procedures followed by SBC Illinois in determining whether to classify a customer's service as residential or business. When a customer calls SBC Illinois to establish service, the representative asks whether the customer wants business or residential service. Tr. 108. Ms. Doyle explained that SBC service representatives who take business orders could not take residential orders (and vice-versa), so that a customer who reached the

⁵ The line rate does not include any taxes or government-related fees, such as the federal access charge. Tr. 148.

wrong type of service representative would be transferred to the correct type of representative to establish service. Tr. 109-10. If a business order is involved, the representative asks the customer how the business should be listed in the Yellow Pages and fills out that portion of the service order accordingly. Tr. 106.

I am confident that the original order placed was schedule for installation at prior to the installation date was classified as residential line. However, later the installation date was also changed and at the desecration of defendant the classification was also manipulated.

SBC Illinois could take several steps if it is uncertain how a customer should be classified. The representative could ask the customer whether the line will be located in a home or a business, and whether the number will be used in advertising or on business cards. Tr. 108-09. The company could send out a technician to look at the space and determine whether it is a business or a residence (id. at 111), or the company could consult its records to see whether other customers in the building were business or residential. Id. at 113. The representative also could ask a customer who wants residential service whether the space where service is to be installed has a personal bathroom or a kitchen. Id. at 110-11.

The defendant may have took several steps at their own however, they failed to listen to me who requested the line. I did not intend to do business using these telephone lines and listing of the numbers came on web site or business card years after the installation of the telephone lines. Listing of the numbers on web or business cards were solely for contact purpose which is for incoming. Additionally, my telephone never went above \$140.00 therefore the defendant had no reason to reclassify it once the installation is done. Total amount of monthly bill do not exceed monthly fixed charges. Using local calls and long distance were majority placed to

family, friends and relatives using third party telephone company. Total amount for the local and long distance was also lower than \$10.00 on an average.

SBC Illinois also may determine after an installation order has been placed that the service is wrongly classified. A technician making the installation knows from the order whether residential or business service has been requested. Tr. 172-73. If the technician notices an incompatibility between the service ordered and the nature of the premises, that information would be reported to the SBC Illinois business service center so that a representative could contact the customer for clarification. Tr. 173-74.

This decision is biased. The defendant must listen to what customer say and if they find wrong doing, then they may act based upon that.

The SBC Illinois tariff contains parameters to distinguish business from residential service. The tariff provides, among other things, that service should be classified as business if it is “situated in a commercial, professional or institutional location.” SBC Ill. Direct Ex. 2 (Tariff No. 20, Pt. 4, § 2, ¶ 1.3(A)(2)). In addition, when a combined business and residence premises is at issue, the company will consider the service as residential only if the service is “located in bona fide residential quarters of such premises.” Id. (¶ 1.3(B)(2)). Ms. Doyle explained that “bona fide residential quarters” would have to have a personal bathroom and a kitchen facility. Tr. 116-17.

The building is several decades old and I am the first tenant of the room. The room had no telephone connection and therefore installation was requested. The defendant is stressing more and more on definition of bona fide residential quarters, however, in absence of such characteristics, how can you classify the services as business? The living condition is unique and may also apply to people living on American Welfare, however people who prefers to live

in this unique living style or are not fortunate to obtain the welfare with bona fide characteristics of residential quarter must not be considered business. Telephone is necessity and these are my primary telephone lines. I neither own any other telephone lines nor rent any other location other than this location.

Relief

Mr. Shah's Complaint asks that the Commission provide him with several types of relief. Primarily, he asks that the service for his two telephone lines be changed from business to residential, with the removal of any Yellow Pages and white pages business listing for the lines and the addition of a white pages residential listing. Complaint, p. 8. In addition, he asks that the balance owed on the account be reduced to zero "to avoid time and money required for adjustment and accounting." Id.

This is true and additional damages were shown on Initial briefing.

The Complaint also requests two other forms of relief, although Mr. Shah presented no evidence on these requests at the hearing. First, Mr. Shah wants SBC Illinois to include a post office box, rather than a street address, in his directory listing. Complaint, p. 8. Second, he asks that the Commission amend its guidelines and adopt new rules to be more responsive to customers' needs. Id.

To include a post office box, rather than a street address is a request. I know defendant offers no listing or listing without address so if possible, they can list my telephone with PO Box number otherwise street address is acceptable. I believe that there is enough room in the Commission's adapted guidelines and change is not required. However, the defendant must be more responsive to customer's need. In my case, when I request residential line there are several ways the defendant could have respond in affirmative manner using the same

guidelines. Instead of stressing too much on bona fide residential features of location, they must have looked at my request and making sure there is overlapping between residential and business characteristics. A location can not be defined as residence in no way can be pushed to classify as business. The defendant must respect customer and their needs.

ARGUMENT

The Commission should deny Mr. Shah's Complaint. The record shows that SBC Illinois correctly categorized his service as business service, so that Mr. Shah is not entitled to any credit on his account. And even if his service were misclassified, the Commission should order a credit only to the extent that the misclassification caused Mr. Shah to be charged more than a residential customer.

True liability is not customer in this case. True liability is the payroll of the defendant, which far exceeds my payments. It has damaged me financially, mentally, and time wise. Therefore, with all respect you be the judge for the awards.

I. SBC ILLINOIS PROPERLY CLASSIFIED MR. SHAH AS A BUSINESS CUSTOMER.

The primary issue here is whether Mr. Shah should be classified as a business or residential customer. Mr. Shah claims that he is entitled to a residential line because he lives at the premises at 107 West Van Buren Street in Chicago. SBC Illinois does not dispute that Mr. Shah lives at the premises, but his residence there is not conclusive of the classification question. In fact, the record discloses at least three reasons why his classification as a business customer is correct: 1) Mr. Shah is using the service to operate a business; 2) a business classification accords with the SBC Illinois tariff; and 3) the circumstances surrounding the establishment of Mr. Shah's account strongly suggest that he sought business service.

As I mentioned earlier 1), these telephone lines are my primary telephones. I do not own any other telephone either in form of landline or wireless line. These telephones are for Rajesh B. Shah and not for Shah-USA. The majority of the service is used for domestic purpose and not for business purpose. 2), SBC Illinois tariff does not say that a location cannot be classified as residence must be considered business. Defendant failed to listen my request; 3), the circumstances surrounding the establishment strongly suggest that the defendant manipulated and discriminated my request. The defendant even failed to reconcile it out of court when given enough opportunities.

It is clear that Mr. Shah is using the service, at least in part, for business purposes. Mr. Shah owns a business, Shah-USA, which offers business services and product distribution and supply services to customers. Tr. 74-75. The Shah-USA website provides a physical address for the business of 107 W. Van Buren, No. 215, Chicago; and lists the two telephone numbers for Mr. Shah's SBC Illinois account. SBC Ill. Cross Ex. 4. Moreover, the physical address and telephone numbers for Shah-USA can be found on a number of other websites listing notaries public, tax accountants, or businesses marketing services to the Indian community. SBC Ill. Cross Ex. 5-8. Under the SBC Illinois tariff, service will be classified as business if the service is "used primarily or substantially for a paid commercial, professional or institutional activity." SBC Ill. Direct Ex. 2 (Tariff No. 20, Pt. 4, § 2, ¶ 1.3(A)(1)). Mr. Shah's use of the two telephone numbers to market the services of Shah-USA on the internet means that he is using his service "substantially for a paid commercial . . . activity." Id.

The tariff also explicitly addresses a situation where, as here, a customer has service in a combined business and residence premises. Such a customer can have residential service only in the “bona fide residential quarters” of the premises. SBC Ill. Direct Ex. 2 (Tariff No. 20, Pt. 4, § 2, ¶ 1.3(B)(2)). SBC Illinois witness Nancy Doyle explained that “bona fide residential quarters” would have to have a personal bathroom and a kitchen facility. Tr. 116-17. The 150 square foot room that Mr. Shah occupies (and from which he operates Shah-USA) has neither its own bathroom nor a built-in kitchen facility. Tr. 92-93. Because the space does not qualify as “bona fide residential quarters” under the SBC Illinois tariff, SBC Illinois properly established business service for Mr. Shah there.

The primary use of telephone is domestic purpose. The telephone is listed under Rajesh B. Shah and not Shah-USA. 99% of the Shah-USA’s business associates have toll free numbers. Use of the services provided by the defendant is minimal to none. Most of the dealing is done through email or via correspondences using PO Box. The defendant’s witness Nancy Doyle explained that “bona fide residential quarters” however there are no description or definition as specific to own bathroom or built in kitchen. In any case, not having that do not constitute the premises a business.

In addition, the SBC Illinois tariff provides that a customer should have business service if, among other things, the service is “situated in a commercial, professional or institutional location.” SBC Ill. Direct Ex. 2 (Tariff No. 20, Pt. 4, § 2, ¶ 1.3(A)(2)). There can be no doubt that the building at 107 West Van Buren Street is a commercial location. All of the other tenants in the building are businesses; these tenants include bars and restaurants, two lawyers, and a delivery company. Tr. 53-56; SBC Ill. Cross Ex. 2.

City of Chicago is changing its face. The defendant must be responsive to the need of the City and customers. There are several apartments, single room weekly hotels, condominium around the location. Lots of high rises are building and even if my landlord find a buyer who can afford the property may sell it out.

Finally, numerous aspects of the order establishing Mr. Shah's account indicate that something other than residential service was contemplated. Although Mr. Shah was moving into a 10' by 15' foot room (Tr. 92), he had four two-line telephone jacks installed. Tr. 101. He also purposely asked for two, easy-to-remember "hundred numbers" for the lines (Tr. 94);⁶ SBC Illinois attempts to reserve such numbers for business customers. Tr. 106-07. Moreover, the order itself could only have been created by an SBC representative specializing in business service orders, whom Mr. Shah would have had to contact through a different number than that used for residential service orders. See Tr. 109-10. The order contained information about how to list Mr. Shah in the Yellow Pages – information that he would have had to supply. SBC Ill. Direct Ex. 1, p. 1; Tr. 105-06. In addition, Mr. Shah obtained free installation, apparently through a sales promotion available only to business customers. Tr. 192-93; SBC Ill. Ex. 1.0 (Conrow), Schedule 1.⁷

The defendant at his or her own discretion contemplated something other than residential service. The whole arguments from the beginning of service were about the classification.

SBC Illinois had ample reasons to classify Mr. Shah as a business customer. The Commission thus should deny his Complaint.

There are ample of reason not to believe the that the Commission thus should request to correct the situation without further wasting resources of the company and be responsive. The

⁶ The two numbers are 312-789-9500 and 312-789-9600. SBC Ill. Cross Ex. 3 (Aug. 28, 2000 bill, p. 1).

⁷ Indeed, it appears that Mr. Shah requested, and received, credits for his installation charges three times. See Tr. 129-30, 137-39, 141-42, 172.

Commission accepts the definition prepared by defendant; however the commission is always watching whether it is applied in constructive manners or not. The accepted definition written by the defendant is not approval of definition. The commission always watches whether the defendant is using the definition in proactive, assertive, and responsive manners to the customers.

II. MR. SHAH IS NOT ENTITLED TO A ZERO BALANCE ON HIS ACCOUNT.

The relief sought by Mr. Shah includes a request that the substantial balance owed on his account be eliminated, “to avoid time and money required for adjustment and accounting.” Complaint, p. 8. The Commission should deny this request because, as discussed in the preceding section, SBC Illinois properly classified Mr. Shah as a business customer. Given that Mr. Shah’s primary claim against SBC Illinois has no basis, there is no reason to award him any remedy.

Even if the Commission assumes, for the sake of argument, that Mr. Shah was misclassified as a business customer, there are several reasons why it should not order SBC Illinois to credit the entire balance owed on the account. First, the statute of limitations bars Mr. Shah’s ability to challenge bills issued prior to August 2001. Second, most of the unpaid charges are for services outside the Commission’s jurisdiction and thus cannot be the subject of a remedy here. Finally, the Commission can order a credit only for the amount Mr. Shah was overcharged due to the misclassification – not for the entire balance owed on the account.

Mr. Shah's claim of incorrect billing is governed by § 9-252.1 of the Public Utilities Act. That section requires that a complaint "relating to an incorrect billing . . . be filed with the Commission no more than 2 years after the date the Customer first has knowledge of the incorrect billing." 220 ILCS 5/9-252.1. The record here shows that Mr. Shah was aware that he was being billed as a business customer sometime prior to September 7, 2000, when he contacted SBC Illinois to question the classification of his service. SBC Ill. Direct Ex. 4; Tr. 178. He filed the Complaint on August 18, 2003, and thus can recover only for incorrect billings in the preceding two-year period.

Regardless of the limitations period, the Commission cannot require SBC Illinois to issue a credit for the more than \$2600 owed on the account, because much of that balance consists of charges from entities other than SBC Illinois for services other than local telephone service. The Commission lacks the authority to order SBC Illinois to refund such charges.

Examination of Mr. Shah's bills (SBC Ill. Cross Ex. 3) shows that he regularly was billed substantial amounts for DSL internet service, internet-related services, and long-distance calls. For example, of the \$160.36 in "current charges" on the September 2003 bill, \$79.90 is for DSL service from SBC Yahoo! Internet Services, \$33.10 is for internet-related services billed by ESBI, \$6.21 is for international long-distance calls billed by WorldxChange Communications, and \$4.41 is for a directory assistance plan provided by Network Connections USA. SBC Ill. Cross Ex. 3 (Sept. 28, 2003 bill).⁸ Disputes regarding charges for international calls and enhanced services such as DSL internet are outside the Commission's authority. See, e.g., Citizens Utility Board v. Illinois Commerce Comm'n, 315 Ill. App. 3d

⁸ SBC Illinois charges for local service on this bill total only \$36.84. SBC Ill. Cross Ex. 3 (Sept. 28, 2003 bill).

928, 936 (3rd Dist. 2000) (stating that ICC has regulatory power only over intrastate telecommunications rates). In fact, none of the entities that provided these services – ESBI, SBC Yahoo! Internet Services, WorldxChange Communications, and Network Connections USA – is even a party to this proceeding. The only respondent here is SBC Illinois. At most, the Commission could order SBC Illinois to issue a credit only for services it provided each month. See 220 ILCS 5/9-252.1 (stating that Commission can order utility to refund overcharge for “service provided”).

Moreover, the refund provided by § 9-252.1 allows the Commission to order SBC Illinois to credit Mr. Shah’s account only for “overcharges” – i.e., the amount that the supposed service misclassification caused his bill to be higher than it should have been. Mr. Shah presented no evidence suggesting that SBC Illinois’ alleged error here had any effect on what third-party service providers charged him for long-distance calls, DSL internet, or other internet-related services. As the complainant, Mr. Shah bears the burden of proving his case before the Commission. See, e.g., Champaign County Telephone Co. v. Illinois Commerce Comm’n, 37 Ill.2d 312, 321 (1967). Because there is no evidence otherwise, the record can only support the conclusion that the alleged misclassification error had no effect on the third-party charges, and Mr. Shah cannot obtain any credit for them. Cf. SBC Ill. Direct Ex. 10 (Tariff No. 20, Pt. 2, § 2, ¶ 3.1) (limiting SBC Illinois’ liability for errors to proportionate charges for period during which mistake occurred).

Business and residential customers do pay different rates for SBC Illinois local service. Tr. 145-46. Even if Mr. Shah’s misclassification claim were valid, however, § 252.1 would

allow him only to recover the difference between the two types of rates. From August 2000 through September 2003, the monthly charge for a residential access line was \$2.55. SBC Ill. Direct Ex. 7; Tr. 147-48. In contrast, during the same period, Mr. Shah paid approximately double that amount for each of his two business lines. See SBC Ill. Cross Ex. 3 (showing monthly line charges ranging from \$5.03 to \$5.10 per line). As a result, even if the Commission accepts Mr. Shah's claim, it could only cut his bill for local service roughly in half.⁹ It could not order SBC Illinois to provide a credit for the entire amount Mr. Shah was charged. Mr. Shah even admitted at the hearing that he would be liable to pay, at residential rates, for the service he received from SBC Illinois. Tr. 56-57.

III. MR. SHAH IS NOT ENTITLED TO CREDITS FOR A MISTAKEN DIRECTORY LISTING.

The Complaint requests that any Yellow Pages or white pages business listing for Mr. Shah be removed and replaced by a white pages residential listing. Assuming for the sake of argument that SBC Illinois incorrectly listed Mr. Shah's account, this mistake cannot form the basis for a refund of any charges.

The tariffs applicable to residential and business directory listings limit the liability of SBC Illinois for erroneous or omitted listings. In general terms, the company is liable only for listings for which it charges the customer and only for the monthly amount of those charges while the error continues. See SBC Ill. Direct Ex. 8 (Tariff No. 19, Pt. 12, § 1, ¶ 1.1(E)), Ex. 9 (Tariff No. 20, Pt. 12, § 1, ¶ 1.1(E)). There is no charge for a business customer's basic white

⁹ The charges for SBC Illinois local service on Mr. Shah's bills also include usage, the federal access charge, and various taxes. There is no evidence in the record regarding the extent to which those charges might vary, depending on a customer's classification as residential or business.

pages and Yellow Pages listing. Tr. 106. A residential customer's primary listing also is free. See SBC Ill. Direct Ex. 9 (Tariff No. 20, Pt. 12, § 1, ¶ 1.2). Because Mr. Shah was charged neither for the business listing he claims was erroneous, nor for the residential listing he did not receive, these tariff provisions preclude his receipt of any credit for these supposed mistakes. Cf. In re Illinois Bell Switching Station Litigation, 161 Ill.2d 233, 244 (1994) (upholding limitation of liability provision). As a result, even if the Commission finds that SBC Illinois incorrectly listed Mr. Shah in its directories, he is not entitled to monetary relief for that error.¹⁰

In this case, true liability is not payment made to me in form of judgment; however, it is the payroll of defendant who failed to appropriate my request reasonably and refused to justify request with common sense. This is explained repeatedly. The purpose of residential line and business line must be appropriated and justified for its use per request by customer. The definition offers enough flexibility and it can be used in favor or against any customer. The definition is fungible. Therefore, it is necessary to have approach that is more realistic, practical, appropriate and justifiable per customer's need. Additionally, I was not in the market to buy Business Telephone line contract and if Residential Telephone line contract was not appropriate, there is no contract exist between defendant and me.

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¹⁰ At the hearing, Mr. Shah presented no evidence on two other requests for relief set forth in the Complaint: a request that SBC Illinois include a post office box, rather than a street address, in his directory listing, and a request that the Commission amend its guidelines and adopt new rules to be more responsive to customers' needs. Because Mr. Shah had the burden of proof, but presented no evidence related to these issues, the Commission should deny these two requests. See, e.g., Champaign County Telephone Co. v. Illinois Commerce Comm'n, 37 Ill.2d 312, 321 (1967); City of Chicago v. Illinois Commerce Comm'n, 13 Ill.2d 607, 616-17 (1958). In addition, it is unclear how Mr. Shah, in filing a complaint only against SBC Illinois, can obtain a ruling requiring the Commission to adopt new rules.

CONCLUSION

THEREFORE, for all of the reasons stated above, the Complaint should be denied. The Commission should specifically find that SBC Illinois properly classified Mr. Shah as a business customer. In addition, the Commission should find that a portion of Mr. Shah's claims is time-barred and that much of his refund request should be dismissed as a matter of law. In the alternative, if the Commission reaches the unlikely conclusion that Mr. Shah should have been classified as a residential customer, it should only order SBC Illinois to credit his account for the amount of the difference between residential and business rates for local service.

THEREFORE, the defendant must list the numbers as residential and appropriate the damages.

Respectfully submitted,
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